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EXAMINER

BONURA, TIMOTHY M

ART UNIT PAPER NUMBER

2184

DATE MAILED: 11/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/533,025

Applicant(s)

WANG ET AL.

Examiner

Tim Bonura

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-13, 17, 18, 20, 23-32, 36, 37, 41, 42, 44-46, 48 and 50 is/are rejected.
- 7) ☒ Claim(s) 8, 9, 14-16, 19, 21, 22, 33-35, 38-40, 43, 47, 49 and 51 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

- Claims 1-3, 11, 24-27, 29, 30, 44 are rejected by Tavallaei, U.S. Patent Number 5,834,856.
- Claims 4-10, 12-23, 28, 31-42, and 45-51 are rejected by Tavallaei in further view of Vert, U.S. Patent Number 6,360,331
- The follow claims are objected to: 8, 9, 14-16, 19, 21, 33-35, 38-40, 43, 47, 49, and 51
- Claim 6 and 13 are rejected by USC 112 1<sup>st</sup> paragraph

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 11, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Tavallaei, et al, U.S. Patent Number 5,834,856. Regarding claim 1 and dealing with the limitation of hosting an electronic commerce site, Tavallaei discloses computer environments for “banking transactions, document production, manufacturing... and information systems” which are equivalent to an electronic commerce system. (Lines 23-32 of Column 4). Concerning the limitation as to method a detecting a change in operation of a computer system, Tavallaei discloses a system that is can detect a failure in a computer system and fail over to a redundant system. (Lines 35-41 of Column 4). Concerning the limitation of automatically configuring a second host computer to host at least some portion of the information that was held by the

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primary sever, Tavallaei discloses a system which shall be given time to become operational if a primary sever fails, which includes a period of time for the backup to become operational.

(Lines 35-50 and 65-68 of Column 4 and Lines 1-3 of Column 5).

3. Regarding claim 2, detecting at least one failure or malfunction of the electronic commerce site, Tavallaei discloses a system which can detect an operational failure and fall over to a back up sever. (Lines 50-62 of Column 3).

4. Regarding claim 3, Tavallaei discloses an act of automatically shutting down the first host computer in response to the act of detecting a failure or malfunction. (Lines 1-4 of Column 5).

5. Regarding claim 11, Tavallaei discloses an act of detecting a decrease in performance of the electronic commerce site. (Lines 50-61 of Column 3).

6. Regarding claim 25, and dealing with the limitation of hosting an electronic commerce site, Tavallaei discloses computer environments for "banking transactions, document production, manufacturing... and information systems" which are equivalent to an electronic commerce system. (Lines 23-32 of Column 4). Concerning the limitation as to method a detecting a change in operation of a computer system, Tavallaei discloses a system that is can detect a failure in a computer system and fail over to a redundant system. (Lines 35-41 of Column 4). Concerning the limitation of automatically configuring a second host computer to host at least some portion of the information that was held by the primary sever, Tavallaei discloses a system which shall be given time to become operational if a primary sever fails, which includes a period of time for the backup to become operational. (Lines 35-50 and 65-68 of Column 4 and Lines 1-3 of

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Column 5). Tavallaei discloses that any number of computer systems can be used to redundant devices or subsystems. (Lines 50-52 of Column 3).

7. Regarding claim 26, and dealing with the limitation of hosting an electronic commerce site, Tavallaei discloses computer environments for “banking transactions, document production, manufacturing... and information systems” which are equivalent to an electronic commerce system. (Lines 23-32 of Column 4). Concerning the limitation as to method a detecting a change in operation of a computer system, Tavallaei discloses a system that is can detect a failure in a computer system and fail over to a redundant system. (Lines 35-41 of Column 4). Concerning the limitation of automatically configuring a second host computer to host at least some portion of the information that was held by the primary sever, Tavallaei discloses a system which shall be given time to become operational if a primary sever fails, which includes a period of time for the backup to become operational. (Lines 35-50 and 65-68 of Column 4 and Lines 1-3 of Column 5). Tavallaei discloses that any number of computer systems can be used to redundant devices or subsystems. (Lines 50-52 of Column 3).

8. Regarding claim 27, Tavallaei discloses a computer system comprising of a first host computer which host an electronic commerce system (Line 23-34 of Column 4), a second host computer (Lines 50-61 of Column 3), and a controller that can automatically configure the second host computer to host the site in response to a change in the first host computer. (Lines 19-26 of Column 3, Lines 50-61 of Column 3, and Lines 35-42 of Column 4).

9. Regarding claim 29, Tavallaei discloses a relay that is couple to a power source that can switch between the providing the first host computers with power and not providing power (Lines 34-50 of Column 6).

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10. Regarding claim 30, Tavallaei discloses a relay that is couple to a power source that can switch between the not providing the second host computers with power and providing power.

(Lines 34-50 of Column 6).

11. Regarding claim 44, computer system that includes means of detecting a failure, malfunction or change in performance, Tavallaei discloses a system that detects failure in a computer system. (Lines 50-61 of Column 3)

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 4, 5, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tavallaei as applied to claim 1-3 above, and further in view of Vert, et al, U.S. Patent Number 6,360,331. Regarding claim 4, Tavallaei discloses a method of which an electronic commerce host has the ability to detect an error, failure, or malfunction on the first host site and upon detecting this problem to configure a second host site and shut down the first host site. Tavallaei does not teach the method of the first host stores data wherein the act of configuring the second host comprises acts of replication the data of the first host from the storage device to the second host computer. Vert discloses a method of the first host stores data wherein the act of configuring the second host comprises acts of replication the data of the first host from the storage device to the second host computer. (Lines 15-25 and 28-39 of Column 2). It would

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have been obvious to one of ordinary skill in the art at the time of the invention to modify the art as described by Tavallaei to include the method disclosed by Vert. It would have been within the teaching of Tavallaei to include the method as described by Vert for having a host computer store data and have an automatic configuration to replicate data from the first host computer to the second. Adding this feature to Tavallaei would increase the reliability of the host system in dealing with detecting failure in the host computer. (Lines 21-25 of Column 2 of Vert).

14. Regarding claim 5, Tavallaei does not disclose a second computer using the replicate to bring the computer online. Vert does disclose a second computer using replicate to bring the computer online. (Lines 39-41 of Column 2).

15. Regarding claim 7, Tavallaei does not disclose an act of replicating data from a first storage device in the first system to a second storage device in the second system. Vert does disclose a first storage device in a first system replicating data to a second storage device in a second system. (Lines 29-39 of Column 2).

16. Regarding claim 10, Tavallaei does not disclose an act of transforming at least a portion of the replicated data of the first host computer for the second host computer when the second host computer is not identical to the first. (Lines 65-68 of Column 1, and Lines 1-13 of Column 2).

17. Claims 12, 18, 20, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tavallaei as applied to claim 1 and 11 above, and further in view of Vert, et al, U.S. Patent Number 6,360,331. Regarding claim 12, Tavallaei discloses a method of which an electronic commerce host has the ability to detect an error, failure, or malfunction on the first host site and upon detecting this problem to configure a second host site and shut down the first host site.

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Tavallaei does not teach the method of the first host stores data wherein the act of configuring the second host comprises acts of replication the data of the first host from the storage device to the second host computer. Vert discloses a method of the first host stores data wherein the act of configuring the second host comprises acts of replication the data of the first host from the storage device to the second host computer. (Lines 15-25 and 28-39 of Column 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the art as described by Tavallaei to include the method disclosed by Vert. It would have been within the teaching of Tavallaei to include the method as described by Vert for having a host computer store data and have an automatic configuration to replicate data from the first host computer to the second. Adding this feature to Tavallaei would increase the reliability of the host system in dealing with detecting failure in the host computer. (Lines 21-25 of Column 2 of Vert)

18. Regarding claim 18, Tavallaei does not disclose a second computer using the replicate to bring the computer online. Vert does disclose a second computer using replicate to bring the computer online. (Lines 39-41 of Column 2).

19. Regarding claim 20, Tavallaei does not disclose an act of replicating data from a first storage device in the first system to a second storage device in the second system. Vert does disclose a first storage device in a first system replicating data to a second storage device in a second system. (Lines 29-39 of Column 2).

20. Regarding claim 23, Tavallaei does not disclose an act of transforming at least a portion of the replicated data of the first host computer for the second host computer when the second host computer is not identical to the first. (Lines 65-68 of Column 1, and Lines 1-13 of Column 2).



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21. Claims 28, 31, 32, 36, 37, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tavallaei as applied to claim 27 above, and further in view of Vert. Regarding claim 28, Tavallaei teaches a computer system with a first computer host severing an electronic commerce site, a second computer, and a controller for handling failure and malfunctions in the first computer. Tavallaei does not teach that a controller automatically configures the second host computer in response to a detection of failure, malfunctions, or a change in performance. Vert discloses a controller that can automatically configure a second host computer upon receiving a detect. (Lines 65-68 of Column 1 and Lines 1-13 of Column 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the controller as taught by Vert into the computer system as disclosed by Tavallaei. It would have been within the teaching of Tavallaei to incorporate the controller as disclosed by Vert because it would allow for a redundant system with a variety of components. (Lines 61-62 of Column 3).
22. Regarding claim 31, Tavallaei does not disclose a computer system that mirrors over a computer systems storage system to a second computer system. Vert discloses the mirroring of a storage system of one computer system to another. (Lines 15-25 of Column 20).
23. Regarding claim 32, Tavallaei does not disclose a computer system that a first storage system is within a first computer system and a second file system is within a second computer system. Vert discloses the separate file system contained within separate computer systems. (Lines 29-41 of Column 2).
24. Regarding claim 36, Tavallaei does not disclose a computer system that mirrors over a computer systems storage system to a second computer system. Vert discloses the mirroring of a storage system of one computer system to another. (Lines 15-25 of Column 20).

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25. Regarding claim 37, Tavallaei does not disclose a computer system that a first storage system is within a first computer system and a second file system is within a second computer system. Vert discloses the separate file system contained within separate computer systems. (Lines 29-41 of Column 2).

26. Regarding claim 41, Tavallaei does not teach a computer system that has a transformation engine that transforms at least a portion of the replicated data for used by the second host computer. Vert discloses a transformation engine (Lines 65-68 of Column 1 and 1-13 of Column 2) as a means of configuring information to work between two computer systems that have different files systems.

27. Regarding claim 42, Tavallaei does not disclose a computer system that a first storage system is within a first computer system and a second file system is within a second computer system. Vert discloses the separate file system contained within separate computer systems. (Lines 29-41 of Column 2).

28. Claims 45, 46, 48, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tavallaei and further in view of Vert. Regarding claim 45, Tavallaei discloses a storage system that a storage device is used to store data from the first host computer corresponding to an electronic commerce site hosted by the first computer and a controller coupled to the first storage device. (Lines 23-43 of Column 4). The controller is referred to, by Tavallaei, as a switching mechanism. (Line 39-40). Tavallaei does not teach that the storage system controller can couple the first host computer and second host computer, automatically configure the second computer to host at least a portion of an electronic commerce site as a response to change in operation of the first host computer. Vert does disclose a controller which can couple the first host computer

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and second host computer, automatically configure the second computer to host at least a portion of an electronic commerce site as a response to change in operation of the first host computer.

(Lines 29-41 of Column 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the controller as disclosed by Vert into the storage system as disclosed by Tavallaei. It would have been within the teachings of Tavallaei to incorporate the controller because having a controller that can successfully and completely maintain functionality of an electronic commerce site is important for production of a company. (Lines 1-10 of Column 3 of Tavallaei).

29. Regarding claim 46, Tavallaei discloses means for detecting at least one failure, malfunction, or change in performance of an electronic commerce site. (Lines 35-41 of Column 4).

30. Regarding claim 48, Tavallaei discloses a second storage device coupled to a second computer and controller, wherein the controller has means for replicating a portion of a site to the second computer. (Lines 55-67 of Column 4 and Lines 1-4 of Column 5).

31. Regarding claim 50, Tavallaei discloses a networked storage system, wherein the first storage device is located in the first computer and the second storage device is located in the second computer. (Lines 5-10 of Column 3).

### ***Claim Rejections - 35 USC § 112***

32. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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33. Claims 6 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims both described an act of “replicating” in which no copying is performed. The examiner understands the meaning of the term replicate to copy something, as an exact copy, to another location. Thereby the examiner cannot conclude how a replicating function could be performed without the act of copying.

***Allowable Subject Matter***

34. Claims 8, 9, 14-16, 19, 21, 33-35, 38-40, 43, 47, 49, and 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

35. The following are examiner’s statement of reason for allowance:

36. Referring to claims 8-9, the primary reason for allowance is the inclusion of modifying a network address of the second host computer.

37. Referring to claims 14-16, the primary reason for allowance is the inclusion of modifying the portion of the replicating data that corresponds to configurable parameters of the first host computer.

38. Referring to claim 17, the primary reason for allowance is the inclusion of performing the replicating without modification to the data used for the electronic commerce site.

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39. Referring to claim 19, the primary reason for allowance is the inclusion of modifying the network director to redirect one communication addressed from the network address of the first host computer to a network address of a second host computer.

40. Referring to claim 21, the primary reason for allowance is the inclusion of modifying the network address of the second host computer to be different than a network address of the first host computer.

41. Referring to claims 33 and 38, the primary reason for allowance is the inclusion of the first host computer is coupled to a first network having a first subnet address and the second host computer is coupled to a second network having a second subnet address that is different than the first subnet address.

42. Referring to claim 43, the primary reason for allowance is the inclusion of a storage processor being operatively coupled to a storage system.

43. Referring to claim 47, the primary reason for allowance is the inclusion of storage processor.

44. Referring to claim 49, the primary reason for allowance is the inclusion of having a portion not being copied from the first storage device to the second storage device.

45. Referring to claim 51, the primary reason for allowance is the inclusion of copying corrupted or unavailable data from the first storage device.

#### ***Conclusion***

46. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Walker, U.S. Patent Number 6,249,879.

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47. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tim Bonura**. The examiner can normally be reached on **Mon-Fri: 7:30-5:00, every other Friday off**. The examiner can be reached at: **703-305-7762**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Rob Beausoliel** can be reached on **703-305-9713**. The fax phone numbers for the organization where this application or proceeding is assigned are:

**703-746-7239 for regular communications**

**703-746-7240 for After Final communications**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is: **703-305-3900**.


Responses should be mailed to:

**Commissioner of Patents and Trademarks**

**Washington, DC 20231**

Tim Bonura  
Examiner  
Art Unit 2184

tmb  
October 29, 2002

  
**ROBERT BEAUSOLIEL**  
**SUPERVISORY PATENT EXAMINER**  
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